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February 1, 2005

Corbin Davis
Clerk, Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

Re: ADM File No. 2003-62; MRPC 6.1 Comments

Dear Mr. Davis:

As co-chairs of the Standing Committee on Justice Initiatives, and as chair of the Pro Bono Initiative, we write to request one addition to the Comments to Michigan Rule of Professional Conduct 6.1 to correct what we believe to be an inadvertent omission from the Comments sent earlier by the Bar.

Before presenting proposed rules to the Court, the Bar encouraged broad participation in the ethics rules revision process. Because the text of Rule 6.1 is of such importance to the access to justice community, the Bar's Pro Bono Involvement Committee (PBIC) undertook an extensive analysis of the rule and presented a draft rule to our predecessor Bar entities - the Access to Justice Task Force, the Legal Aid Committee, and the Open Justice Commission. Each of these committees endorsed the PBIC recommendation, which closely tracked the ABA rule, but differed from it in several ways.¹

The Ethics Committee recommended no change to the current Michigan rule 6.1. The current rule consists of a short statement encouraging pro bono. Specifics on compliance with the existing rule are found in the Representative Assembly's (RA) freestanding 1990 Voluntary Standard for Pro Bono. The Voluntary Standard provides that a minimum \$300 contribution "to not-for-profit programs organized for the purpose of delivering civil legal services to low income individuals or organizations" fulfills the obligation. The Standard states "a list of eligible programs will be published by the Committee on Pro Bono Involvement and made available annually through the State Bar of Michigan."²

¹ The PBIC proposed 30, not 50, hours to preserve the Michigan tradition found in the Voluntary Standard for Pro Bono. It did not recommend that (b)(3) of the ABA Model, which includes "activities to improve the law, the legal system or the legal profession" in the definition of pro bono, be adopted. It added specific references in the comments to the role of the State Bar's Access to Justice Campaign in pro bono activities, and otherwise tried to preserve the institutional role that the Bar's PBIC has played in encouraging lawyers to participate in pro bono and in publishing lists of non profit programs that provide pro bono opportunities that comply with the existing Voluntary Standard.

² The State Bar and its PBI has spent considerable time and other resources encouraging non-profit legal service programs to offer volunteer opportunities that comply with the Voluntary Standard, thus assuring lawyers that their services are directed to programs that follow the Voluntary Standard. Of further importance, the Bar established the Access to Justice (ATJ) Campaign in 1998 and has again invested

Because of the volume of material involved in the ethics rules promulgation process, the RA made policy decisions at its November 14, 2003 meeting based on proposals prepared on each non-consent rule. While neither the complete language of 6.1 nor any comments were actually debated by the RA, the full discussion reflected in the RA meeting transcript and the narrow issues addressed make it clear that the RA adopted the PBIC version of 6.1, with one exception – to add (b)(3) of the ABA rule allowing “activities to improve the law, the legal system or the legal profession” back into the rule.

The PBIC version included reference in the Comments to the ATJ Campaign, and to the institutional role of the Bar in identifying non-profit programs that meet the standards. Because the RA adopted language consistent with the position of PBIC, we believe the important role the Bar plays in identifying qualifying pro bono programs should be reflected in the Comments to 6.1. In transmitting the rule, the Bar transmitted the comments to the ABA rule verbatim, not the comments as modified by the PBIC. We would ask the court to add four sentences to Comment 10 to reflect this intent. Those sentences are shown in *italics* below:

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. *For example, the State Bar of Michigan’s Access to Justice Development Campaign raises funds for the provision of legal services in all areas of the state. The Campaign guideline is ‘a minimum donation of \$300 per lawyer per year.’ This Rule recognizes a financial contribution to the ATJ Campaign as one method of satisfying a lawyer’s pro bono responsibility.* Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible. *The State Bar of Michigan will publish a list of eligible programs annually.*


significant resources in educating lawyers about the need for services and the financial challenges of the non-profit programs that deliver those services. To date, the ATJ Campaign has raised \$5 million in cash, pledges and planned gifts made to the ATJ Fund held by the Michigan State Bar Foundation. That support has been provided primarily by Michigan lawyers who choose to meet their pro bono obligations with a financial donation to the ATJ Fund, including designations to any of the nearly 40 non-profit organizations it supports. Those non-profit programs are reviewed annually by the PBI to assure they meet the requirements of the pro bono standard.

The State Bar is proud of its support for access to justice initiatives. We recognize and are grateful to the Court for its partnership in these efforts. We are requesting these changes so that Rule 6.1—which is the single ethics rule most directly addressing the Bar’s institutional commitment to access to justice issues—reflects the best thinking of the PBIC and the policies actually intended by the RA.

Respectfully Submitted,



Richard McLellan
Co-chair,
Standing Committee on Justice Initiatives



Hon. Cynthia D. Stephens
Co-chair,
Standing Committee on Justice Initiatives



Robert F. Gillett
Chair, Pro Bono Initiative

Cc: Nancy Diehl, President
Elizabeth Jamieson, Chair, Representative Assembly
John Berry, Executive Director
Janet Welch, General Counsel